



Billing Code 3720-58

## **DEPARTMENT OF DEFENSE**

### **Department of the Army, Corps of Engineers**

#### **33 CFR Part 334**

##### **Atlantic Ocean south of entrance to Chesapeake Bay; firing range.**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing to amend an existing permanent danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. For decades, the Dam Neck Surface Danger Zone (SDZ) served as a firing range for gunnery training at what is now Naval Air Station Oceana's Dam Neck Annex. While the Navy continues to use the SDZ for training, fixed-mount gunnery operations have not been conducted there for over 30 years. The proposed amendment is necessary to accurately identify the hazards associated with training and mission operations to protect the public. The proposed amendment will identify the area within the current danger zone boundary where live fire exercises are no longer conducted and no restriction to surface navigation exists. In addition, the proposed amendment will remove references to live fire range conditions and safety procedures as shore-to-sea gunnery operations are no longer conducted.

**DATES:** Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number COE-2018-0007, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2018-0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2018-0007. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend

that you include your name and other contact information in the body of your comment and with compact disc you may submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 for the amendment of an existing danger zone, in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. In a memorandum dated July 23, 2018, the Department of the Navy requested that

the Corps modify 33 CFR 334.390 to amend the existing danger zone. The proposed danger zone amendment is necessary to protect the public from hazards associated with training and mission operations, and to improve vessel traffic throughput and maritime safety in the northeast region of the SDZ. The proposed modification identifies an area within the current of the danger zone where live fire exercises are no longer conducted and no restriction to surface navigation exists.

#### Procedural Requirements

##### a. Review under Executive Orders 12866 and 13563.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rule governing the danger zone, which allow any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. The

proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The danger zone is necessary to protect public safety during use of the small arms range. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public. After considering the economic impacts of this proposed danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the comment period is closed and all comments have been received and considered.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

**PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.390 to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

(a) The danger zone. (1) A section extending seaward for a distance of 12,000 yards between two radial lines bearing 030° True and 083° True, respectively, from a point on shore at latitude 36° 46' 48" N, longitude 75° 57' 24" W; and an adjacent sector extending seaward for a distance of 15 nautical miles

between two radial lines bearing 083° True and 150° True, respectively, from the same shore position. The datum for these coordinates is WGS-1984.

(b) The regulations. (1) To accommodate ingress and egress within the southern approach to the Chesapeake Bay Federal navigation channels, no live fire exercise will take place within the area northeast of, and defined by a line intersecting points latitude 36° 47 '59" N, longitude 75° 46' 05" W and latitude 36° 44' 25" N, longitude 75° 38' 57" W, and this area is open to unrestricted surface navigation.

(2) Within the remainder of the danger zone vessels shall proceed through the area with caution and shall remain therein no longer than necessary for the purpose of transit.

(3) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

(4) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(5) Lookout posts will be manned by the activity or agency operating the firing range at the Naval Air Station Oceana, Dam Neck Annex, in Virginia Beach,

Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(6) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(7) Throughout the entire danger zone anchoring, dredging, trawling and any bottom disturbing activities should be conducted with caution due to the potential of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) on the bottom.

(c) Enforcement. The regulation in this section shall be enforced by the Commander, Naval Air Force Atlantic, U.S. Fleet Forces Command, Norfolk, Virginia, and such agencies as he or she may designate.

Dated: February 7, 2019.      Approved: \_\_\_\_\_

Thomas P. Smith, P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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